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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

FRANK JOSEPH CARDERELLA,) CASE NO. CV 09-8299 R (MANx)
Plaintiff,)
vs.)
JANET NAPOLITANO, as Secretary) PLAINTIFF'S NOTICE OF
of the Department of Homeland) MOTION AND MOTION FOR
Security) IMPOSITION OF ISSUE-RELATED
Defendant.) SANCTIONS/ EVIDENTIARY
) SANCTIONS (ADVERSE
) INFERENCE SANCTION AND/OR
) SANCTION DEEMING FACT
) ESTABLISHED AND/OR
) EXCLUSIONARY SANCTION);
) MEMORANDUM OF POINTS AND
) AUTHORITIES; DECLARATIONS
) OF JOHN A. STILLMAN AND
) FRANK CARDERELLA; REQUEST
) FOR JUDICIAL NOTICE IN
) SUPPORT THEREOF
)
) Date: October 12, 2010
) Time: 10:00 a.m.
) Ctrm: Spring Street Courthouse
) 312 North Spring Street, Ctrm 8
) Los Angeles, California 90012
)
)
)

1) Trial Date: October 19, 2010
2) Time: 9:00 a.m.
3) Ctrm: Spring Street Courthouse
4) 312 North Spring Street, Ctrm 8
5) Los Angeles, California 90012
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8) Honorable Manuel L. Real
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TO DEFENDANT AND ITS ATTORNEY OF RECORD;

PLEASE TAKE NOTICE that on October 12, 2010, at 10:00 a.m., or as soon thereafter as this matter may be heard, in Courtroom 8 of the above-entitled Court located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, the Honorable Manuel L. Real presiding, plaintiff Frank Carderella (“Carderella” or “Plaintiff”), will, and hereby does, move this court for Issue Related Sanctions/Evidentiary Sanctions in the form of: (1) an adverse inference that the records destroyed by Defendant would have supported a finding of the alleged discrimination and/or (2) that the fact of said discrimination by Defendant against Plaintiff is deemed established as follows: “Defendant denied an employment opportunity to Plaintiff when on September 15, 1996, Plaintiff was not selected, despite his qualifications, for the position of Detention Enforcement Officer, GS-7 because of Plaintiff’s race (white), sex (male), religion (Catholic) and national origin (Italian).” and/or (3) exclusion of any evidence offered by Defendant to refute discrimination and/or (4) such other sanctions as this court may deem appropriate.

This motion is made on the grounds that the INS has admitted to destroying the records and files relevant to the alleged discrimination of Plaintiff despite both a legal and internal duty to preserve the same upon notice of Plaintiff’s discrimination claim. As a consequence of said destruction there are no records or files from which Plaintiff can establish the alleged discrimination. Nor,

1 do any of the INS employees who would have likely participated in the alleged
2 discriminating selection to fill the vacant DEO position have any recollection
3 regarding the same. As a consequence, Plaintiff has been substantially prejudiced
4 in the prosecution of his claim for discrimination. Under such circumstances, this
5 court has the inherent power to impose the requested sanctions.

6 This motion is based on this Notice of Motion, the Memorandum of Points
7 and Authorities, Declarations of John A. Stillman and Frank Carderella and the
8 Request for Judicial Notice.

9 This motion is made following the conference of counsel pursuant to
10 L.R.7-3 which took place on September 7-8, 2010.

11 Date 9/10/10

Respectfully Submitted,

GOOD, WILDMAN, HEGNESS & WALLEY

14 By:

15 John A. Stillman, Attorneys for Plaintiff,
16 Frank Joseph Carderella